

APPENDIX B

CLOSED

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARVIN MAHAN and
TANG REALTY, INC.

Defendants.

C.A. No. 00CV4953 (WHW)

UNITED STATES
DISTRICT COURT

2004 APR 22 P 12:09

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CONSOLIDATED WITH

UNITED STATES OF AMERICA,

Plaintiff,

v.

TRANSTECH INDUSTRIES, INC.

Defendant.

C. A. No. 01-5398 (WHW)

CONSENT DECREE

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I. BACKGROUND

A. The Plaintiff in this action is the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"). In its Complaints, the United States asserted claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), for recovery of response costs incurred at or in connection with the release or threatened release of hazardous substances at a site known as the Chemsol, Inc. Superfund Site located at the end of Fleming Street in Piscataway, New Jersey (the "Site").

B. The Settling Defendants in this action are Marvin Mahan ("Mahan"), Tang Realty, Inc. ("Tang Realty"), and Transtech Industries, Inc. ("Transtech"). Mahan was the founder, President and principal stockholder of Chemsol, Inc. ("Chemsol"). Mahan formed Chemsol in 1948 and Chemsol operated at the Site from 1951 until on or about 1965. Chemsol bought by-products and waste chemicals to either re-sell or re-process at the Site. Since November 20, 1978, Tang Realty, Inc. has owned the Property at the Site. Mahan is the President of Tang Realty. The United States alleges that Transtech is liable under Section 107(a) of CERCLA as a former operator of the Site at the time of disposal of hazardous substances and as a corporate successor to Chemsol, which operated at the Site from the 1950's until 1965.

C. The Settling Defendants that have entered into this Consent Decree do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint. Transtech specifically does not admit the allegations in the complaint that it is a former operator at the Site and/or is a corporate successor to Chemsol.

D. The Settling Defendants have also asserted an inability to pay all of the response costs sought by the United States, and have provided Financial Information to support that claim. The United States has reviewed the Financial Information submitted by the Settling Defendants to determine whether Settling Defendants are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendants are able to pay the amounts specified in Section VI and otherwise resolve their alleged liability to the United States in the manner provided in this Consent Decree.

E. The United States and the Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Venue properly lies in this district pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1395(a). Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon the Settling Defendants, and their heirs, successors, and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

“Day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the United States Department of Justice and any successor departments or agencies of the United States.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Financial Information" shall mean those financial documents submitted to the United States by Settling Defendants prior to execution of this Consent Decree by the Parties.

"Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"Net Sales Proceeds" shall mean the total value of all consideration received by Tang Realty and Mahan for each Transfer of the Property, less federal, state and other taxes owed on the proceeds, and less all outstanding real estate taxes owed on the Property. Tang Realty and Mahan shall provide EPA with documentation sufficient to show the total value of all consideration received by Tang Realty and Mahan for each Transfer at the time of each Transfer, the amount of the proceeds of the Transfer, and the amount of federal, state or other taxes owed on the proceeds. This documentation shall include, but not be limited to, the report of an appraisal paid for by Settling Defendant from the escrow account, performed by an appraiser satisfactory to the Parties, upon appraisal assumptions satisfactory to the Parties. The documentation shall also include, either as part of the report or separately, 1) a tax statement showing the assessed valuation of the Property for each of the three years immediately preceding the Transfer, and 2) a schedule showing all outstanding indebtedness on the Property.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

"Parties" shall mean the United States and the Settling Defendants.

"Plaintiff" shall mean the United States.

"Property" shall mean the Property as defined in Appendices B (legal description) and C (map) to this Consent Decree, and use of this term shall be deemed to include any portion of the Property.

"Response Costs" shall mean all costs, including but not limited to direct and indirect costs, including oversight costs, that EPA or DOJ on behalf of EPA has incurred or will incur at or in connection with the Site, plus accrued Interest on all such costs.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendants" shall mean Marvin Mahan, Tang Realty, Inc. and Transtech Industries, Inc.

"Site" shall mean the Chemsol Superfund Site, located at the end of Fleming Street in Piscataway, New Jersey, and depicted in Appendix A (legal description) and B (map). As used solely for purposes of this Consent Decree, the term "Site" shall be deemed to include any portion of the Site, including the Property, where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

"Transfer" shall mean each sale, assignment, transfer or exchange by Tang Realty and Mahan (or their successors or heirs) of the Property, or any portion thereof, or of an entity owning the Property, where title to the Property (or any portion or interest thereof) or to the entity owning the Property i) is transferred to any person who is not a Settling Defendant in this

Consent Decree, or ii) is transferred involuntarily by operation of law, including foreclosure and its equivalents following default on the indebtedness secured, in whole or in part, by the Property, including, but not limited to, a deed or other assignment in lieu of foreclosure. A Transfer does not include a transfer pursuant to an inheritance or a bequest.

"2000 Consent Decree" shall mean a Consent Decree entered into with respect to the Site between the United States and Tang Realty, in its capacity as "Owner Settling Defendant," among other settling defendants, which was entered by the District Court for the District of New Jersey on January 26, 2000.

"United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants to resolve their liability to the United States at the Site as provided by the terms of this Consent Decree.

VI. OBLIGATIONS OF SETTLING DEFENDANTS

5. a. Obligation to Transfer Property. Tang Realty shall continue to hold title to the Property until the Property is transferred pursuant to the provisions of this Consent Decree. Prior to such Transfer, Tang Realty shall not convey any security interest in the Property or otherwise encumber title to the Property in any way without prior written approval of EPA. Settling Defendants Tang Realty and Mahan jointly and severally agree to Transfer title to and all interest in the Property to an EPA approved entity using "best efforts," as defined below, and in accordance with the procedures and conditions specified below.

b. Procedures and Conditions Governing Transfer of Property.

- i. Upon lodging of this Consent Decree, Tang Realty and Mahan shall establish an escrow account in the amount of \$50,000, bearing interest at the commercial rate (the "escrow account"). The escrow account shall be used by Tang Realty and Mahan solely to fund any reasonable expenses incurred in marketing and completing the Transfer of the Property or any portion thereof. Commencing 30 days after lodging, Tang Realty and Mahan shall provide EPA with monthly reports itemizing all expenses deducted from the escrow account along with any supporting documentation pertaining to such expenses.
- ii. For purposes of this Consent Decree, "reasonable expenses" shall mean those costs reasonably necessary to undertake "best efforts" to market and effectuate the Transfer of the Property or any portion thereof.
- iii. For purposes of this Consent Decree, "best efforts" include, but are not limited to, (A) listing the Property with a broker, dealer or agent who usually deals with the type of property in question and who has been approved by EPA; (B) advertising the Property as being for sale on a monthly basis in national computer networks, commercial referral services, direct marketing and mailing programs, real estate publication, trade or other publication suitable for the Property, or a newspaper of general circulation (defined as one with a circulation of over 10,000) covering Middlesex County, and adjacent counties, to the extent practicable; (C) responding to the reasonable inquiries of prospective buyers; (D) providing a power of attorney with full authority to act on behalf of Tang Realty and Mahan on all matters relating to the Property and sale of the Property; (E) seeking approval for the partitioning of the Property if so directed by EPA to allow sale of any designated parcel or parcels of the Property; and (F) allowing the Property to be shown at all reasonable times. Settling Defendants shall consult as appropriate with EPA

regarding all terms and conditions of the listing of the Property with a broker, dealer or agent and the advertising of the Property as being for sale.

iv. Tang Realty and Mahan shall provide EPA with notification of any offer to purchase the Property, including the origin and terms of any such offer, within 15 days of receipt thereof. Notice shall be provided in the manner prescribed in Section XV (Notices and Submissions) of this Consent Decree. Acceptance by Tang Realty and Mahan of any offer to purchase the Property or any portion thereof, as well as the terms and conditions of the Transfer agreement, shall be subject to EPA approval. Tang Realty and Mahan shall not transfer title to or any interest they may have in the Property to any other person without having received prior written approval of the proposed terms of such Transfer, including the proposed sale price, from EPA. Tang Realty and Mahan shall effectuate the Transfer of title to the Property or any portion thereof within 30 days of EPA's approval of the Transfer agreement.

v. Any contract for sale of the Property shall require the purchaser to grant access to the United States and its representatives, including EPA and its contractors, agents, and representatives, and parties designated by EPA, for the purpose of conducting any response activity related to the Site. The contract also shall require the purchaser to grant to the United States and its representatives the right to enforce any land and/or water use restrictions or other restrictions that EPA determines necessary to implement, ensure non-interference with, or ensure the protectiveness of the removal or remedial measures performed or to be performed at the Site. If the United States approves the terms of any proposed sale, including the terms of the Transfer agreement between Tang Realty and Mahan and the prospective transferee, Tang Realty and Mahan agree to sell the Property pursuant to such terms within 30 days of EPA's written approval thereof.

c. Net Sales Proceeds from Transfer of Property and Escrow Account. The United States shall be paid toward reimbursement of Response Costs all Net Sales Proceeds resulting from any sale, lease or Transfer of title to the Property (or any portions thereof) to any entity after entry of this Consent Decree. All Net Sales Proceeds resulting from any sale or Transfer of title to the Property shall be paid to the United States in accord with the procedures set forth in this Paragraph, and within seven days of Tang Realty/Mahan's receipt of Net Sales Proceeds from any Transfer of the Property. The United States shall also be paid toward reimbursement of Response Costs the remainder of the escrow account, including all interest that has accrued thereon. Payments made pursuant to this Paragraph shall be identified as "Net Sales Proceeds." The Settling Defendants shall not receive any funds or other consideration which may result from any sale or lease of the Property or any portions thereof, nor shall Settling Defendants receive compensation for any efforts, including any "best efforts," made by them in marketing and selling the Property or any portion thereof after lodging of this Consent Decree. All funds generated from leasing or providing a license to use any portion of the Property after entry of this Decree shall be paid to the United States.

d. Net Sales Proceeds and Escrow Account Payment Procedure. Net Sales Proceeds and escrow account remainder shall be transmitted directly to EPA via electronic funds transfer ("EFT"), along with the following information, to EPA's account with Mellon Bank, Pittsburgh, Pennsylvania as follows:

- i. Amount of payment
- ii. Title of Mellon Bank account to receive the payment: EPA
- iii. Account code for Mellon Bank account receiving the payment: 9108544
- iv. Mellon Bank ABA Routing Number: 043000261
- v. Name of Settling Defendant
- vi. Case number: 02-1999-0019
- vii. Site/spill identifier: 02-C3

To ensure that payment is properly recorded, Tang Realty and Mahan shall send a letter, within one week of the EFT, which references the date of the EFT, the payment amount, the name of the site, the case number, and Tang Realty and Mahan's name and address, to EPA and DOJ as provided in Section XV (Notices and Submissions) and to: Chief, Financial Management Branch, US EPA, Region II, 290 Broadway, 29th Floor, New York, New York 10007-1866. The amounts to be paid toward reimbursement of United States' Response Costs shall be deposited into the Chemsol, Inc. Site Special Account within the EPA Hazardous Substance Superfund. Any balance remaining in the Chemsol, Inc. Site Special Account upon completion of all Response Actions shall be transferred by EPA to the EPA Hazardous Substance Superfund.

6. Reimbursement of Response Costs. Within 15 days of entry of this Consent Decree, Settling Defendants jointly and severally shall pay the United States the sum of \$150,000 toward reimbursement of Response Costs relating to the Site (the "settlement amount"). This payment shall be made by FedWire EFT or wire transfer to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2000V01937, the EPA Region and Site/Spill ID #02-C3 and DOJ case number 90-11-3-06104/1. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of New Jersey. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Settling Defendants shall send notice that such payment has been made to the United States as specified in Section XV (Notices). The amounts to be paid to the United States toward reimbursement of United States' Response Costs shall be deposited into the Chemsol, Inc. Site Special Account within the EPA Hazardous Substance

Superfund by EPA upon entry of this Consent Decree, to be retained and used to conduct or finance response actions at or in connection with the Site. Any balance remaining in the Chemsol, Inc. Site Special Account upon completion of all response actions shall be transferred by EPA to the EPA Hazardous Substance Superfund.

7. After Transfer of the Property at the Site or any portion thereof by Tang Realty and Mahan, and after payment of the settlement amount, Settling Defendants shall continue to be bound by all the terms and conditions, and entitled to all the benefits, of this Consent Decree. Nothing herein, including but not limited to the Transfer of the Property in accordance with this Section, shall relieve Tang Realty of its obligations set forth in the 2000 Consent Decree.

VII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

8. Interest on Late Payments. In the event that any payment required by Section VII, Paragraph 9 (Stipulated Penalties), is not received when due, Interest shall accrue on the unpaid balance from the day after payment is due through the date of payment.

9. Stipulated Penalties.

a. If Tang Realty and Mahan fail to Transfer the Property within 30 days of EPA's approval of the Transfer Agreement, Tang Realty and Mahan shall be in violation of this Consent Decree and shall be jointly and severally liable to pay to EPA, as a stipulated penalty, \$5,000.00 per day that such Transfer is late.

b. If Settling Defendants do not comply with Section XII (Access to Information) or Section XIII (Retention of Records), Settling Defendants shall be in violation of this Consent Decree and shall be jointly and severally liable to pay to EPA, as a stipulated penalty, \$1,000 per violation per day of such noncompliance, provided, however, that stipulated penalties for lost documents shall not exceed \$10,000.

c. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be remitted via Electronic Funds Transfer, along with the following information, to EPA's Account with Mellon Bank, Pittsburgh, Pennsylvania, as follows:

- i. Amount of payment
- ii. Title of Mellon Bank account to receive the payment: EPA
- iii. Account code for Mellon Bank account receiving the payment: 9108544
- iv. Mellon Bank ABA Routing Number: 043000261
- v. Name of Party making payment
- vi. EPA Case Number: 02-1999-0019
- vii. Site/Spill Identifier Number: 02-C3

At the time of each payment, Settling Defendants shall send notice that payment has been made and shall reference the name and address of the Settling Defendant or Defendants making payment, the EPA Region and Site Spill ID Number 02-C3, USAO File Number 2000V01937 and DOJ Case Number 90-11-3-06104/1. The notice shall be sent to EPA and DOJ as provided in Section XV (Notices and Submissions) and to: Chief, Financial Management Branch, U.S. EPA, Region II, 290 Broadway, 29th Floor, New York, New York 10007-1866.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity, or as otherwise provided in this Consent Decree. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

10. If the United States files with the Court a motion to enforce this Consent Decree, a complaint, or any other application for payment required under this Consent Decree and (1) the United States thereafter receives a payment; or (2) an order is issued directing payment of any portion of the amount sought by the United States; or (3) the action is settled in a manner in which the United States receives any portion of the amount sought, the Settling Defendants shall reimburse the United States for all costs arising from the preparation and filing of the motion, complaint or other application, including but not limited to, costs of attorney time.

11. Payments made under Paragraphs 8 through 10 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

12. Unless otherwise indicated, the obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of any one or more Settling Defendant to make the payments required under this Consent Decree, the remaining Settling Defendants shall be responsible for such payments.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from performance of any other requirements of this Consent Decree.

VIII. RELEASE OF NOTICE OF FEDERAL LIEN

14. After receiving written notice of the Transfer of the Property in accordance with Paragraph 5 of this Consent Decree, EPA shall file a Release of Notice of Federal Lien in the Recorder's Office, Middlesex County, State of New Jersey. The Release of Notice of Federal

Lien shall release the Notice of Federal Lien filed on July 23, 1991 and shall not release any other lien or encumbrance which may exist upon the Property within the Site.

IX. COVENANT NOT TO SUE BY PLAINTIFF

15. Covenant Not to Sue by Plaintiff. Except as specifically provided in Paragraph 16 (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, and subject to Tang Realty's obligations under the 2000 Consent Decree, this covenant not to sue shall take effect upon Settling Defendants' completion of their obligations identified in Section VI (Settling Defendants' Obligations) and Section VII, Paragraph 9 (Stipulated Penalties). This covenant not to sue is conditioned upon complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree, and, as to Tang Realty, this covenant not to sue is further conditioned upon complete and satisfactory performance of its obligations under the 2000 Consent Decree. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by the Settling Defendants and the completeness of the documents and records listed in Appendix C. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendants shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph XI shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendants' false or materially inaccurate information. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

16. General Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 15 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- c. criminal liability;
- d. liability for injunctive relief;
- e. liability for future disposal of a hazardous substance, pollutant or contaminant at the Site; and
- f. liability arising from the past, present, future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

17. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if any of the certifications made by Settling Defendants in Paragraph 29, are false or, in any material respect, inaccurate.

X. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

18. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site, Response Costs or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§

9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at the Site for which the Response Costs were incurred;

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site; and

d. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

Except as provided in Paragraph 23 with respect to waiver of claim-splitting defenses, these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 16, but only to the extent that Settling Defendants' claims arise from the same Response Costs that the United States is seeking pursuant to the applicable reservation.

19. a. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

b. Settling Defendants agree not to assert any CERCLA claims or causes of action that they may have for all matters related to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendants may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendants.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

20. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

21. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are the United States' Response Costs for the Site. The "matters addressed" in this settlement do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with the Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

22. The Settling Defendants agree that, with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon them. In addition, the Settling Defendants shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

23. In any subsequent administrative or judicial proceeding initiated by the United

States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section IX.

XII. ACCESS TO INFORMATION

24. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to their activities at and nexus to the Site. Settling Defendants have compiled a list of all such documents coming within the scope of this Paragraph and Paragraph 27, attached hereto as Appendix C, and certify in accordance with Paragraph 29 that such list is complete and accurate.

25. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Documents or information determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. Settling Defendants may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Defendant asserts such a privilege in lieu of providing documents, records, or other information, that Party shall provide Plaintiff with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other Consent Decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records and documents that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

26. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents, records or information evidencing conditions at or around the Site.

XIII. RETENTION OF RECORDS

27. Until ten years after the entry of this Consent Decree, the Settling Defendants shall preserve and retain all records and documents now in their possession or control, as listed in Appendix C, regardless of any corporate retention policy to the contrary.

28. After the conclusion of the document retention period in the preceding paragraph,

the Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records or documents to EPA or DOJ. The Settling Defendants may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other Consent Decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. The Settling Defendants shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

XIV. CERTIFICATION

29. By signing this Consent Decree, the Settling Defendants certify individually that, to the best of their knowledge and belief, they have:

a. conducted a thorough, comprehensive, good faith search for documents, and have fully and accurately disclosed to EPA in the form of the list attached hereto as Appendix C, all information currently in their possession, or in the possession of their officers, directors, employees, contractors, or agents, which relates in any way to their activities at and nexus to the Site;

b. not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information relating to their potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Defendants regarding the Site;

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e);

d. submitted to EPA Financial Information that fairly, accurately, and materially sets forth their financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Defendants execute this Consent Decree; and

e. has arranged in writing with the prospective transferee to comply with all state and local tax and assessment requirements, including payment of any tax arrearages.

XV. NOTICES AND SUBMISSIONS

30. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-07116)
P.O. Box 7611
Washington, D.C. 20044-7611
Attention: Chemsol Site Attorney

As to EPA:

Attn: Chemsol Site Attorney
New Jersey Superfund Branch
Office of the Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, New York 10007-1866

As to Settling Defendants Tang Realty and Marvin Mahan:

Michael K. Mullen, Esq.
Schenck, Price, Smith & King
10 Washington Street
P.O. Box 905
Morristown, NJ 07963

As to Settling Defendant Transtech Industries, Inc.:

James M. Andrews, Esq.
Blank Rome Comisky & McCauley, LLP
210 Lake Drive East, Suite 200
Cherry Hills, NJ 08002

XVI. RETENTION OF JURISDICTION

31. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVII. INTEGRATION

32. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations,

agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A is the legal description of the Site and Property
Appendix B is the map of the Site and Property
Appendix C is the list of records and documents meeting the descriptions set forth in Paragraphs 24 and 27.

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

33. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

34. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XIX. EFFECTIVE DATE

35. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XX. SIGNATORIES/SERVICE

36. Each undersigned representative of the Settling Defendants, the U.S. Environmental Protection Agency and the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms

and conditions of this Consent Decree and to execute and bind legally such Party to this document.

37. The Settling Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

38. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. The Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

SO ORDERED THIS 22 DAY OF April, 2004.



HON. WILLIAM H. WALLS
United States District Judge

Case 2:00-cv-01950-JL-BJM Document 1-2 Filed 04/22/2004 Page 37 of 48

Dated: February 27, 2004

Respectfully submitted,

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice
Washington, D.C. 20530

JONATHAN A. MARKS
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
P.O. Box 7611 Ben Franklin Station
Washington, D.C. 20044
(202) 514-4454

CHRISTOPHER J. CHRISTIE
United States Attorney for the
District of New Jersey

MICHAEL A. CHAGARES
Assistant United States Attorney
Chief, Civil Division
District of New Jersey
970 Broad Street, Room 400
Newark, New Jersey 07102
(973) 645-2700

OF COUNSEL:

AMELIA M. WAGNER
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway
New York, New York 10007-1866
(212) 637-3141

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Marvin Mahan, Civil Action No. 00-49953 (WHW), relating to the Chemsol Superfund Site.

FOR THE ENVIRONMENTAL PROTECTION
AGENCY

Date: _____

JANE M. KENNY
Regional Administrator
U.S. Environmental Protection Agency, Region II

AMELIA M. WAGNER
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway
New York, New York 10007-1866

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Marvin Mahan, Civil Action No. 00-49953 (WHW), relating to the Chemsol Superfund Site

FOR SETTLING DEFENDANT
MARVIN MAHAN.

Date:

9/26/03

(Signature) Marvin Mahan

Address

St. Petersburg, Florida

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: MICHAEL K. MULLEN, ESQ.

Title: SCHENCK, PRICE, SMITH AND KING, LLP

Address: 10 WASHINGTON STREET, P.O. BOX 905
MORRISTOWN, N.J. 07963

FOR SETTLING DEFENDANT
TANG REALTY, INC.

Date:

9/26/03

Signature

MARVIN H. MAHAN

Printed Name

PRESIDENT

Title

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: MICHAEL K. MULLEN, ESQ.

Title: SCHENCK, PRICE, SMITH AND KING, LLP

Address: P.O. BOX 905, 10 WASHINGTON STREET, MORRISTOWN,
NEW JERSEY 07963

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Marvin Mahan, Civil Action No. 00-49953 (WHW), relating to the Chemsol Superfund Site

FOR SETTLING DEFENDANT
TRANSTECH INDUSTRIES, INC.

Date: _____

(Signature) _____

Address

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: James M. Andrews

Title: Attorney at Law

Address: Blank Rome LLP
A Pennsylvania LLP
Woodland Falls Corporate Park
210 Lake Drive East, Suite 200
Cherry Hill, NJ 08002

Appendix A

Subdivision Check ☒
Ownership Check ☒

a corporation existing under and by virtue of the laws of the State of New Jersey
having its principal office at 1703 E. Second Street
in the Township of Scotch Plains in the County of
Union and State of New Jersey herein designated as the Grantor,
And TANG REALTY, INC.

COUNTY OF MIDDLESEX	
CONSIDERATION	635,900.00
REALTY TRANSFER TAX	1976.55
TAX	832.55

located at 1703 E. Second Street
in the Township of Scotch Plains in the County of
Union and State of New Jersey herein designated as the Grantees;

Witnesseth, that the Grantor, for and in consideration of
One Dollar

lawful money of the United States of America, to it in hand well and truly paid by the Grantees, at or
before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the
Grantor being therewith fully satisfied, does by these presents grant, bargain, sell and convey unto the
Grantees forever,

All those tracts or parcels of land and premises, situate, lying and being in the
Township of Piscataway in the
County of Middlesex and State of New Jersey, more particularly described as follows:

FIRST TRACT:

BEGINNING at a point in the northerly right-of-way line of the Port Reading
Railroad, said point being the intersection of property about to be conveyed and
the easterly side line of the development known as New Market Terrace, Section 3,
situated in the Township of Piscataway, Middlesex County, New Jersey by F.A. Dunham,
Incorporated, on file in the Middlesex County Clerk's Office, and from said
beginning point running thence (1) along the northerly side line of the Port
Reading Railroad right-of-way south seventy-nine degrees fifty-five minutes East
one thousand seven hundred three feet, more or less, to a point in line of lands
of Charles Smith; thence (2) along the westerly property line of Charles Smith
northerly one thousand feet, more or less to the southeasterly corner of lands
recently granted to Melsen E. Laustsen; thence (3) along the southerly side line
of Laustsen's property parallel to, and one thousand feet distant at right angles
from the northerly side line of the Port Reading Railroad right-of-way north
seventy-nine degrees fifty five minutes west one thousand seven hundred seventy
feet, more or less, to a point in the easterly side line of the development known
as New Market Terrace, Section 3, aforesaid; thence (4) on the easterly line of
New Market Terrace south one degree nineteen minutes west one thousand ten feet,
more or less, to the point and place of Beginning.

SECOND TRACT:

BEGINNING at a point in the center line of New Brunswick Avenue, said point being
distant six hundred forty-one and seventy-five hundredths feet in a magnetic course,
north three degrees forty-four minutes east (as the needle pointed in 1936) from
the intersection of the said center line of New Brunswick Avenue with the northerly
right of way line of the Port Reading Railroad; thence (1) along the center line
of the said New Brunswick Avenue, north three degrees forty-four minutes east,
one hundred twenty-five feet to a point; thence (2) at right angles to said
New Brunswick Avenue, north eighty-six degrees, sixteen minutes West, and passing
over an iron pipe at twenty-five feet from the center line of said Avenue, three
hundred forty-eight and forty-eight hundredths feet to an iron pipe; thence
(3) South 3 degrees 44 minutes West and parallel with the first course 125 ft. to
an iron pipe; thence (4) South 86 degrees 16 minutes North parallel with the
second course 348.48 ft. to the place of Beginning.

5 EVIDENCE
Notary Public Court
DATE 4/2/04

229A 1A, 1B, 2A, 15, 15-41

229 A

1-A

1-B

229 A

2A
DA

THIRD TRACT:

Shown and designated on a certain map entitled "Map of Revised Section 3, New Market Terrace" developed by the Ben Smith Realty Corporation located in Middlesex County, N.J. surveyed by S.T. Churchill, Civil Engineer and Surveyor, June, 1926 and duly filed in said County Clerk's Office on July 17, 1926, which lots being described as follows:

Said lots being known as and by Lot No. 15 and Lots No. 19 to 41, both inclusive, in block 46 on the said map.

Said lots also known as Lot 15 and Lots 19 to 41, both inclusive, in Block 230 on the official Tax Map of the Township of Piscataway.

FOURTH TRACT:

All of the right, title and interest of the Grantors in and to a certain easement agreement dated October 19, 1970, recorded December 4, 1970 in Deed Book 2717 at page 736, et. seq. which easement agreement was executed by E & C Holding Company, a New Jersey corporation, as Grantor, in favor of Marvin H. Mahan, as Grantee, which easement agreement affected the following described premises:

All that certain property situate, lying and being in the Township of Piscataway, County of Middlesex and State of New Jersey, described as follows:

Beginning at the northwesterly corner of land now or formerly of Earl T. and Anna E. Crawford said point being on the following two courses from the intersection of the center line of New Brunswick Avenue with the northerly right of way line of the Port Reading Railroad (1) along the said center line of New Brunswick Avenue North three degrees forty-four minutes East seven hundred sixty-six and seventy-five hundredths feet to a point (2) along the northerly boundary line of lands now or formerly of Earl T. and Anna E. Crawford North eighty-six degrees sixteen minutes West three hundred forty-eight and forty-eight hundredths feet to the point of Beginning and from said point of Beginning running, thence (1) along the projection of the said northerly boundary line of lands now or formerly of Earl T. and Anna E. Crawford North eighty-six degrees sixteen minutes West four hundred fifteen feet more or less to a point, on the dividing line between Lots 2 and 1-A, Block 229-A, Piscataway Township Tax Map, thence (2) along the said dividing line between Lots 2 and 1-A, Block 229-A, Piscataway Township Tax Map running in a southerly direction fifty feet more or less to a point, thence (3) being fifty feet at right angles and parallel to the first course South eighty-six degrees sixteen minutes East four hundred fifteen feet more or less to a point on the most westerly boundary line of lands now or formerly of Earl T. and Anna E. Crawford, thence (4) along said most westerly boundary line of lands now or formerly of Earl T. and Anna E. Crawford North three degrees forty-four minutes East fifty feet to the point and place of Beginning.

The within-described premises are the same premises shown on the certain survey prepared by R. P. Wilson Associates, Civil Engineers and Land Surveyors on survey designated, "Plan of Survey made for Morton A. Siegler situated in Township of

(description continued on Rider attached hereto and made
a part hereof)

RIDER

Description Cont.

Piscataway, Middlesex County, New Jersey, scale 1" = 100' dated August 2, 1971, revised January 10, 1972". It is the intention of the within deed to convey all of the right, title and interest of the grantors in and to the premises hereinbefore described and in and to all of the following-described premises:

PARCEL A: *BLK 229A Lots 1A & 1B & BLK 230 Lots 15 & 16-4*

BEGINNING at a point in the northerly line of Fleming Street (formerly Franklin Street) where same is intersected by the easterly line of Hanover Street (formerly High Street) and thence running (1) along the said northerly line of Fleming Street (formerly Franklin Street) S. 79° 55' E. 160.0' to a point; thence (2) South 1° 19' W. 151.77' to a point in the northerly right of way line of the Port Reading Railroad; thence (3) along the said northerly right of way line of the Port Reading Railroad South 79° 55' E. 1700' to a point in the westerly line of Lot #2, Block 229-A as shown on the Tax Maps of the Township of Piscataway; thence (4) North 4° 34' E. along the said westerly line of Lot 2 1004.66' to an iron pipe located at the intersection of the said westerly line of Lot 2 and the southerly line of Lot 1, Block 229-A as shown on the Tax Maps of the Township of Piscataway; thence (5) North 7° 50' W. and along the said southerly line of Lot 1 1757.04' to an iron pipe; thence (6) South 5° 47' W. 7.51' to a point; thence (7) South 1° 19' W. 11.32' to a point; thence (8) South 78° 53' W. 88.80' to a point in the aforesaid easterly sideline of Hanover Street; thence (9) South 11° 07' E. and along the said easterly sideline of Hanover Street 50' to a point; thence (10) North 78° 53' E. 77.78' to a point; thence (11) South 1° 19' W. 233.46' to a point; thence (12) North 79° 55' West 75.19' to a point in the aforesaid easterly sideline of Hanover Street; thence (13) South 10° 05' West and along the said westerly sideline of Hanover Street 550.00' to the point and place of beginning.

PARCEL B: *BLK 229A Lot 2A*

BEGINNING at an iron pin found in the westerly sideline of New Brunswick Avenue at a point distant approximately 641' more or less from the intersection of the said westerly sideline of New Brunswick Avenue with the northerly right of way line of the Port Reading Railroad and running thence (1) North 85° 36' West 323.48' to a point; thence (2) North 4° 24' East 125.00' to a point; thence (3) South 85° 36' East 348.48' to a point in the center line of New Brunswick Avenue; thence (4) South 4° 24' West along the center line of New Brunswick Avenue 125.00' to a point; thence (5) North 85° 36' West 25.00' to the aforesaid iron pin in the westerly side line of New Brunswick Avenue and the point and place of BEGINNING.

PARCEL C:

BEGINNING at the termination of the 2d course described in Parcel B supra and from said beginning point running thence: (1) North 85° 36' West 414.94' to a point in the dividing line between Lot 1A and Lot 2 in Block 229-A as shown on the Tax Maps of the Township of Piscataway; thence (2) South 04° 14' West and along said dividing line between Lots 1A and 2, 50' to a point; thence

RIDER

Page 2

(3) South 85° 36' East 415.00' to a point in the westerly line of the premises described in Parcel B above; thence (4) North 4° 24' East and along the westerly boundary line of the premises described in Parcel B above, 50' to the point and place of BEGINNING.

The above descriptions as set forth regarding Parcels A, B and C have been prepared from and in accordance with the certain survey prepared by R. P. Wilson Associates dated August 2, 1971, revised January 10, 1972.

With reference to the premises described in Parcel C above, the grantors herein grant, bargain, sell and convey to the grantees all of their interest in said premises and in and to a certain easement agreement dated October 19, 1970, recorded December 4, 1970 in Deed Book 2717, at page 736, et seq., which easement agreement was executed by E & C Holding Company, a New Jersey corporation, as Grantor, in favor of Marvin H. Mahan, as Grantee, which easement agreement affects the premises described in Parcel C above.

NOTE: The iron pin referred to as the Beginning Point of the description of Parcel B is located in the westerly sideline of New Brunswick Avenue distant 25.00' westerly on a course of South 85° 36' East from a point in the center line of New Brunswick Avenue, which point is distant 641.75' in a magnetic course North 03° 44' East (as the needle pointed in 1936) from the intersection of the said center line of New Brunswick Avenue with the northerly right of way line of the Port Reading Railroad.

This conveyance is made expressly subject to the terms and conditions of the following agreements:

1) Agreement by and between M. A. Siegler Associates and E & C Holding Company dated August 22, 1972; and

2) Agreement by and between M. A. Siegler Associates and Immar Associates, Inc. dated as of April 20, 1977.

Being the same premises conveyed by Immar Associates, Inc. to Millington Quarry, Inc. by deed dated November 20, 1978 and recorded in the Middlesex County Clerk's Office

STATE OF NEW JERSEY

COUNTY OF UNION

FOR RECORDER'S USE ONLY

Consideration \$ 535,900.00

Realty Transfer Fee \$ 1376.00

Date By 11/20/78

*Use symbol "C" to indicate that fee is exclusively for county use.

(1) PARTY OR LEGAL REPRESENTATIVE (See instruction #3)

Gary A. Mahan

being duly sworn according to law upon his oath deposes and say that he is the

President of Millington Quarry, Inc.

(Name of Grantor, Grantee or Legal Representative, if Legal Representative, specify in what capacity)

in the deed between

Millington Quarry, Inc., 1703 E. Second Street, Scotch Plains, New Jersey

(Name and Address of Grantor)

Tang Realty, Inc., 1703 E. Second Street, Scotch Plains, New Jersey

(Name and Address of Grantee)

dated November 20, 1978 and annexed hereto.

(2) OFFICER OF CORPORATE GRANTOR OR CORPORATE GRANTEE (See instruction #4)

Deponent states that he is the President

(Title of Corporate Officer)

of Millington Quarry, Inc.

(Name of Corporate Grantor or Grantee)

and that he is fully acquainted with the business of said corporation and knows the actual and full consideration paid or to be paid for the transfer of title to the premises described in the deed annexed hereto.

(3) OFFICER OF TITLE COMPANY OR LENDING INSTITUTION (See instruction #5)

Deponent states that he is the _____ of

(Title)

(Name of Title Company or Lending Institution)

participating in the deed transaction herein described and that he knows the actual and full consideration paid or to be paid for the transfer of title to the premises described in the deed annexed hereto.

(4) CONSIDERATION (See instruction #6)

Deponent states that, with respect to deed hereto annexed, the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid for the transfer of title to the lands, tenements or other realty, including the remaining amount of any prior mortgage to which the transfer is subject or which is to be assumed and agreed to be paid by the grantee and any other lien or encumbrance thereon not paid, satisfied or removed in connection with the transfer of title is \$ 535,900.00

(5) LOCATION OF PROPERTY

Deponent states that the real property transferred by the deed annexed hereto is located in

Township of Piscataway

(Taxing District)

and Middlesex County

(County)

(6) EXEMPTION FROM FEE (Complete only if exemption from fee or any part thereof is claimed.)

CHECK APPROPRIATE BLOCK BELOW.

Deponent claims that this deed transaction was exempt from the realty transfer fee imposed by c. 49, P.L. 1968 ☐ (See instruction #7) or is exempt from the increased fee imposed by c. 176, P.L. 1975 ☐ (See instruction #8) for the following reason(s):

Deponent makes affidavit to induce the County Clerk or Register of Deeds to record the deed and accept the fee submitted herewith in accordance with the provisions of c. 49, P.L. 1968.

Subscribed and Sworn to before me

this 20th day of November 1978

Name of Deponent

1703 E. Second Street
Scotch Plains, New Jersey 07076

Address of Deponent

FOR OFFICIAL USE ONLY This space for use of County Clerk or Register of Deeds.

Instrument Number 4421 County 2224

Deed Number Book 3066 Page 577

Deed Dated 11/20/78 Date Recorded 12/18/78

IMPORTANT - BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE HEREOF.

This form is prescribed by the Director, Division of Taxation in the Department of the Treasury, as required by law, and may not be altered or amended without the approval of the Director.

ORIGINAL - White copy to be retained by County.

DUPLICATE - Yellow copy to be forwarded by County to Division of Taxation.

RECEIVED & RECORDED
MILLINGTON QUARRY, INC.

70 DEC 13 AM 9:46

3066 PAGE 578
FRANK SCHATZMAN
CLERK

14621

Deed

MILLINGTON QUARRY, INC.

A corporation of
New Jersey

TO

TANG REALTY, INC.

Dated November 20, 1978

15 16 17 18 19 20 21 22 23 24 25
13 25

Record and Return to:

Edward J. Egan, Esq.
1703 E. Second Street
Scotch Plains, New Jersey 07076

2717 MAR 786

EASEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that E & C HOLDING COMPANY, a New Jersey Corporation, having its principal office at #4100 New Brunswick Avenue, in the Township of Piscataway, County of Middlesex and State of New Jersey, hereinafter called the "Grantor", for and in consideration of the sum of SEVENTEEN THOUSAND EIGHT HUNDRED (\$17,800.00) DOLLARS, and other good and valuable consideration, in hand paid by MARVIN H. MAHAN, residing at #2250 Woodland Terrace, in the Township of Scotch Plains, County of Union and State of New Jersey, hereinafter called the "Grantee", does hereby give and grant to the said Grantee an easement to cross over or upon, to install, excavate, construct, maintain, renew and repair a street and roadway in perpetuity, including, but not limited to, the right to enter upon said premises for the purpose of making all necessary repairs and performing maintenance thereon:

All that certain property situate, lying and being in the Township of Piscataway, County of Middlesex and State of New Jersey, described as follows:

BEGINNING at the northwesterly corner of lands now or formerly of Earl T. and Anna E. Crawford said point being on the following two courses from the intersection of the center line of New Brunswick Avenue with the northerly right of way line of the Port Reading Railroad (1) along the said center line of New Brunswick Avenue North three degrees forty-four minutes East (N 3° 44' E) seven hundred sixty-six and seventy-five hundredths (765.75') feet to a point (2) along the northerly boundary line of lands now or formerly of Earl T. and Anna E. Crawford North eighty-six degrees sixteen minutes West (N 86° 16' W) three hundred forty-eight and forty-eight hundredths (348.48') feet to the point of Beginning and from said point of Beginning running, thence (1) along the projection of the said northerly boundary line of lands now or formerly of Earl T. and Anna E. Crawford North eighty-six degrees sixteen minutes West (N 86° 16' W) four hundred fifteen (415' ±) feet more or less to a point on the dividing line between Lots 2 and 1-A, Block 229-A, Piscataway Township Tax Map, thence (2) along the said dividing line between Lots 2 and 1-A, Block 229-A, Pis-

cataway Township Tax Map running in a southerly direction fifty (50') feet more or less to a point, thence (3) being fifty (50) feet at right angles and parallel to the first course South eighty-six degrees sixteen minutes East (S 86° 16' E) four hundred fifteen (15) feet more or less to a point on the most westerly boundary line of lands now or formerly of Earl T. and Anna E. Crawford, thence (4) along said most westerly boundary line of lands now or formerly of Earl T. and Anna E. Crawford North three degrees forty-four minutes East (N 3° 44' E) fifty (50') feet to the point and place of BEGINNING.

The Grantee herein and his heirs, administrators, executors and assigns shall have the benefit and use of said easement for the purpose of ingress and egress for pedestrians and for light and heavy passenger and commercial vehicles.

Reserving unto the Grantor herein and its successors and assigns the right to use the road or street in common with the Grantee, and reserving also the right of access to the road from the parcels of land now owned by the Grantor on both sides of the easement, as well as the right to cross the road at any point with pedestrian or vehicular traffic. The Grantor also reserves the right to cross said road with a railroad spur or siding.

To have and to hold unto the Grantee herein, his heirs and assigns forever, for the uses and purposes aforesaid.

The Grantor herein agrees to consent to the dedications of the easement to the Township of Piscataway for public road purposes, and to execute a deed for the property herein described to the Municipality, if such deed is necessary for the dedication of the property as a public road or street, if the Municipality assumes the responsibility for the repair and maintenance of the road; it being understood, however, that until the Municipality assumes such responsibility, the obligation to maintain and repair the roadway shall be that of the Grantee.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals or caused these presents to be signed by

ECC 2717 NOV 730

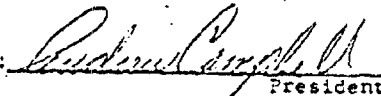
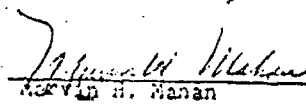
their proper corporate officers and their proper corporate seals
to be hereto affixed this 19 day of October, 1970.

E & C HOLDING COMPANY



Secretary

BY:


President
Marvin H. Mahan

As to Marvin H. Mahan

STATE OF NEW JERSEY:
SS.
COUNTY OF SOMERSET :

BE IT REMEMBERED, that on this 19 day of October one thousand nine hundred and seventy, before me, the subscriber, a Notary Public personally appeared Andrew Campbell President of E & C HOLDING COMPANY, who I am satisfied, is the person who has signed the within instrument; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as such officer aforesaid; and that the within instrument is the voluntary act and deed of said corporation made by virtue of authority from its Board of Directors.

Sharon H. [Signature]

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 30, 1973



- 3 -

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5585

EASEMENT AGREEMENT

Between

E & C HOLDING COMPANY, a
New Jersey Corporation,

And

MARVIN H. MAHAN

DATED: October 19, 1970

Prepared by: Benjamin Weiner, Esq.

Law Offices
Weiner, Schoifet & Hendler
75 Paterson Street,
New Brunswick, N.J.

10/27/70

5585 NJS645 W00009

RECEIVED & RECORDED
NOTARY PUBLIC

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FRANK SCHATZMAN
CLERK

Appendix B

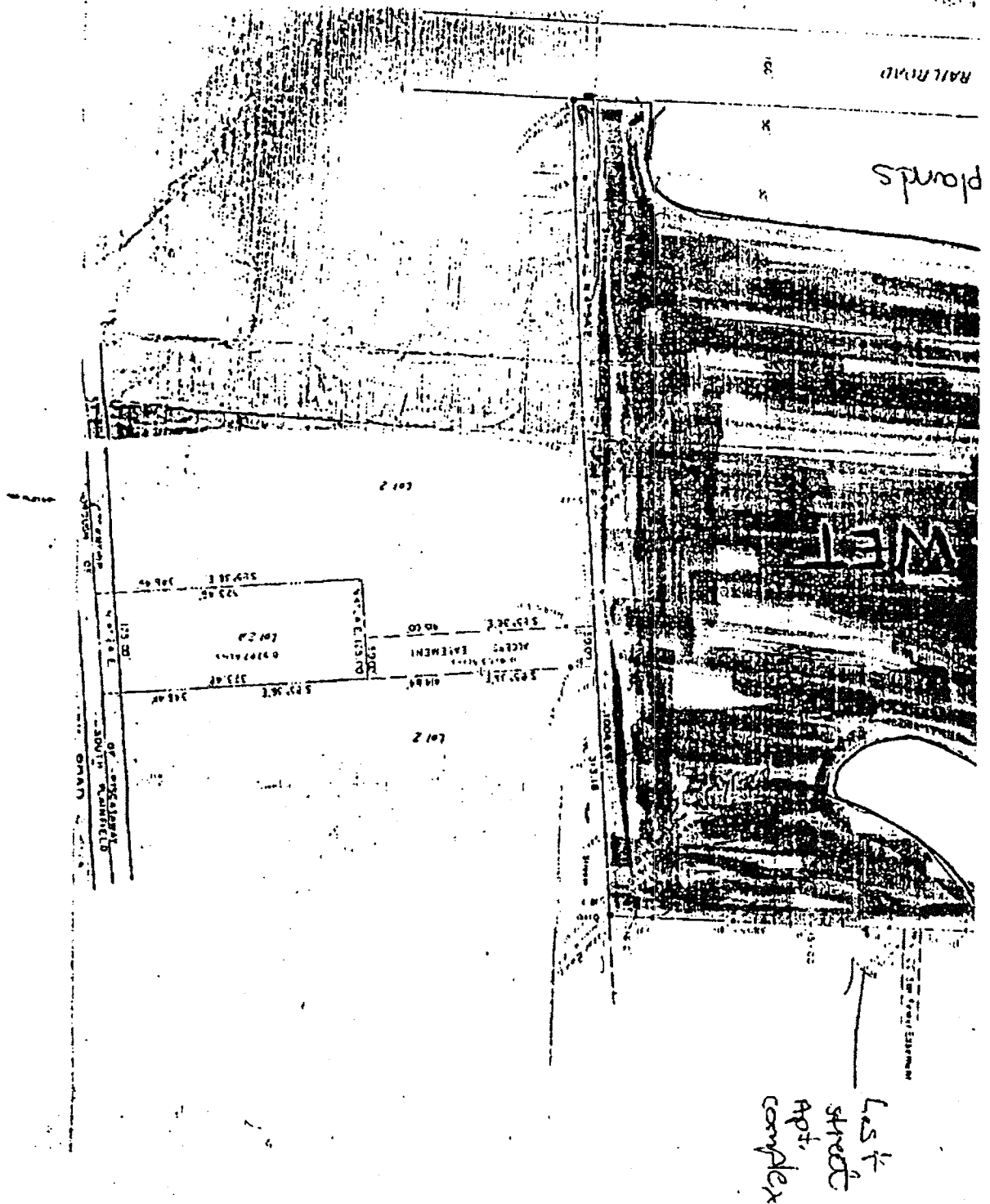
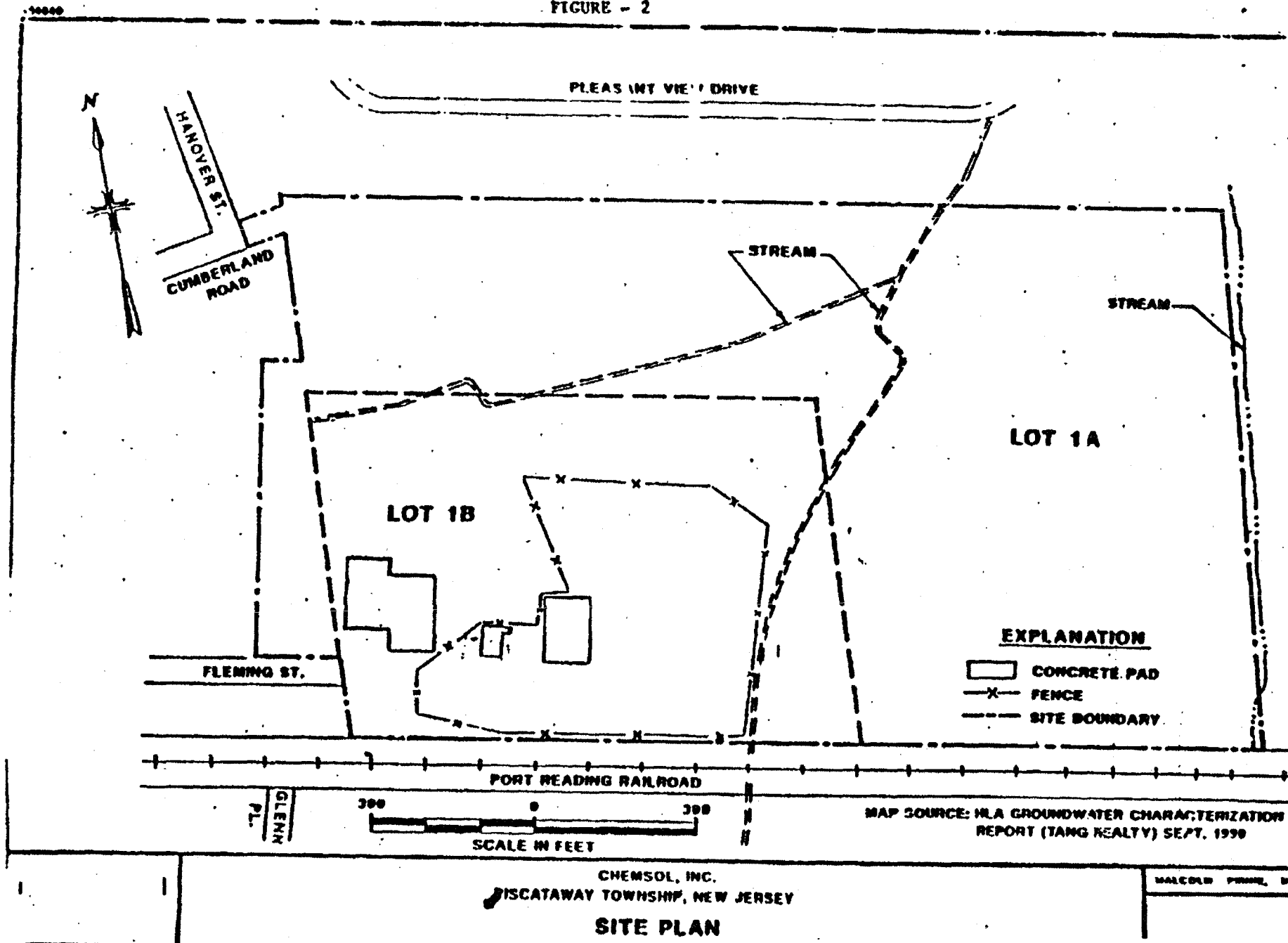


FIGURE - 2



Appendix C

Appendix C

List of records and documents meeting the descriptions set forth in Paragraphs 24 and 27:

- 1 Marvin Mahan's 104 response to the United States Environmental Protection Agency
 - 2 Deed between Marvin and Ingrid Mahan and Tang Corporation, dated April 15, 1953
 - 3 Conveyance of real property from Tang Corporation to Chemsol, Inc., dated October 6, 1960
 - 4 SCTC Offering Circular
 - 5 Scientific Chemical Treatment Co., Inc. Annual Report 1968
 - 6 Record of Decision for Chemsol, Inc. Superfund Site, dated September, 1998
 - 7 Township Committee of Piscataway Township Meeting Minutes, dated October 28, 1964
 - 8 Township Committee of Piscataway Township Meeting Minutes, dated March 16, 1965
 - 9 Letter to the Mayor of the Township of Piscataway from Marvin Mahan, dated April 5, 1965
 - 10 Chemsol, Inc. Annual Report 1964
 - 11 Excerpts from Deposition of Marvin H. Mahan (AT&T Technologies, Inc. v. Transtech Industries, Inc., No. 88-4267 (D.N.J.))
 - 12 The Courier News article dated October 27, 1965
 - 13 Agreement between Chemsol, Inc. and Cenco, dated April 28, 1965
 - 14 Agreement of Merger between Chemsol, Inc. and Cenco, dated July 1, 1965
 - 15 Certificate of Incorporation of Chemsol, Inc. dated November 4, 1965
 - 16 Agreement between Marvin Mahan and Cenco, dated November 1, 1965
 - 17 SCTC Board Meeting Minutes dated November 5, 1965
-

- 18 SCTC Board Meeting Minutes dated May 17, 1967
- 19 Marpak letter referring to merger, dated July 10, 1968
- 20 CB Lilly letter dated 6/19/67; Letter from Robert Meagher to Feuerstein & Sachs, dated July 23, 1968
- 21 Letter from Robert Meagher referring to new facility located at 351 Oliver Street, Newark, New Jersey, dated April 26, 1968
- 22 Purchase Order for Martin Plastics, dated April 3, 1967
- 23 Various pieces of correspondence following July 16, 1967 fire addressed to Chemsol, Inc. rather than Marpak, Inc.
- 24 Excerpts from Deposition of George Terpak, Jr. (Transtech Industries, Inc. v. A&Z Septic Clean, No. 2-90-2578 (D.N.J.))
- 25 Addendum to Agreement dated November 29, 1965 leasing additional lands adjacent to Carlstadt
- 26 SCTC Board Meeting Minutes dated November 28, 1965
- 27 SCTC Board Meeting Minutes dated March 1, 1967
- 28 Portion of Certification of John Meagher dated June 26, 1973
- 29 Settlement Agreement between Transtech and Tang Realty, Inc., dated December 30, 1988
- 30 Transtech press release dated October 4, 1990
- 31 Chemsol, Inc. Annual Report 1961
- 32 SCTC Annual Report 1966